United Nations **AT**

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 975

Case No. 1076: RIVOLA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Hubert Thierry, President; Mr. Julio Barboza, Vice-President; Mr. Victor Yenyi Olungu;

Whereas on 21 novembre 1996, the Tribunal rendered Judgement No. 792 in favour of the Applicant, Ms. Gisèle Rivola;

Whereas, in paragraph VII of this judgement, the Tribunal concluded as follows:

"(1) The Tribunal orders that the Applicant's case be remanded to the Classification Committee and that her post grading should be reconsidered. (Cf. Judgements No. 597, *Colayco* (1993) and No. 602, *Calder* (1993)). In accordance with article 9, paragraph 2 of the Tribunal's Statute, the Tribunal orders the Respondent to pay to the Applicant three months of her net base salary at the rate in effect at the time of her separation from service.

(2) In addition, because of the callous manner in which the Respondent handled the Applicant's case, the Tribunal orders the Respondent to pay the Applicant as compensation the amount of three months' net base salary at the rate in effect at the time of her separation from service."

In compliance with the Tribunal's judgement, the International Trade Centre (ITC) remanded the case to its Classification Appeals Committee which examined it on 6 February 1998. On 2 March 1998, the Chief, Personnel Section, Division of Administration, recommended to the Executive Director that the grade of the post previously occupied by the Applicant be maintained at the G-4 level. The recommendation was endorsed by the Executive Director on 3 March 1998 and communicated to the Applicant on 25 March 1998.

On 21 April 1998, the Applicant addressed a letter to the Secretay-General objecting to the finding of the Classification Appeals Committee. By a letter dated 25 September 1998, the Chief, Personnel Section, ITC, replied to the objections of the Applicant addressed to the Secretary-General, transmitting to her a copy of the rating sheet and of the Report of the Classification Appeals Committee.

On 7 April 1998, the Applicant filed an application with the Tribunal in which she requested the implementation of Judgement No. 792. The application contained pleas which read as follows:

"A. Cancellation of the recommendation made by the Classification Appeals Committee and endorsed by the Executive Director of ITC by communication of 25 March 1998 (...).

B. Cancellation of the memorandum dated 22 March 1991 of the Chief of Personnel (...) establishing the grade of my post at the G-4 level.

C. Implementation of the administrative decision of the Chief of Personnel of 8 December 1989 (...) informing me of 'the results of the job classification' and annexing the new job description of the G-5 post (...).

D. Retroactive implementation of that classification to 1 January 1989, in accordance with the memorandum of the Executive Director dated 20 March 1990 (...).

E. Payment of compensation in the amount of US$ 138,000 to cover material injury and loss of salary and pension rights. Payment of an additional amount of US$ 150,000 for the moral injury suffered."

Whereas the Respondent filed his answer on 4 November 1999;

Whereas the Applicant filed written observations on 28 December 1999;

Whereas the Applicant's principal contentions are:

1. The Respondent failed to comply with and properly implement the decision of the Administrative Tribunal rendered in Judgement No. 792.

2. The procedures employed by the Respondent in the classification exercise ignored the identical basic elements of fairness found lacking by the Tribunal in Judgement No. 792, were also arbitrary and prejudicial and continued to violate the Applicant's due process rights.

Whereas the Respondent's principal contentions are:

1. The Respondent properly implemented Judgement No. 792 by remanding the case to the Classification Committee and in instructing it to scrupulously follow proper procedures in the reconsideration of the grading of the Applicant's post.

2. The procedure and process followed by the Committee were fair and protected the Applicant's due process rights

The Tribunal, having deliberated from 26 October to 17 November 2000, now pronounces the following judgement:

1. This is not the first time that the Applicant has filed an application with the Tribunal. Even though a recommendation had been made in 1989 to reclassify her post to the G-5 level, it was decided in 1991 to maintain the post at the G-4 level. The Applicant lodged an appeal with the JAB to cancel the decision taken in 1991 and thus to reclassify the post to the G-5 level. The JAB declined to overturn the decision because of the lack of evidence that the Applicant had been discriminated against, but recommended to the Secretary-General that she be granted compensation because of the summary nature of the classification exercise. The Secretary-General complied with the recommendation of the JAB and granted the Applicant two months salary. The Applicant was not satisfied with this decision, however, and filed an appeal with the Tribunal, which, in its Judgement No. 792, of 21 November 1996, remanded the case to the Classification Committee for reconsideration of the Applicant's post grading. The Applicant was awarded further compensation of

three months salary in addition to the two months salary that had been granted in accordance with article 9, paragraph 2, of the Tribunal's Statute.

In compliance with the Tribunal's decision, the Classification Committee reviewed the classification of the Applicant's post and maintained it at the G-4 level, whereupon the Applicant filed another application with the Tribunal to cancel the decision taken in 1991 (to maintain her post at the G-4 level) and to pay her the additional salary corresponding to the G-5 level for the period from January 1989 to January 1993 (the date on which she was individually promoted to the G-5 level) and corresponding to the G-6 level (to which she believes she should normally have been promoted) for the period from February 1993 to the end of January 1996, the date on which she retired. In addition, she sought an increase in her pension for the period since 1996 and substantial compensation for the moral injury suffered.

The Applicant's pleas are directed towards the cancellation or setting aside of the decision taken by the Classification Committee, which convened a special meeting as requested by the Tribunal in its Judgement.

II. The Applicant contests the decision of the Classification Committee on other grounds. She alleges that the Committee took too long to meet after the Tribunal had rendered its Judgement. It did not have before it the relevant documents (but mistakenly considered an outdated job description instead of a more recent document, though not signed by the Applicant). In particular, the Committee did not hear the principal parties concerned and thus the Applicant herself and her hierarchical superiors.

The Respondent argues only that the Judgement of the Tribunal had been properly implemented once a committee had convened a meeting and that the procedure followed has been in conformity with the rules in force. The Respondent nevertheless draws attention to a very detailed document prepared by ITC entitled, "Written observations on the [Applicant's] appeal to the United Nations Administrative Tribunal". In that document, the Applicant's criticisms are given serious consideration and most of them are refuted on the grounds that the retroactive classification of a post in 1998 following two previous exercises in 1991 and 1993 gives rise to innumerable disputes. The Tribunal must be careful not to substitute itself for a classification committee and redo that

committee's work. The Tribunal is not competent, for example, to rule, as the Applicant requests, on the choice of classification methods. The following points, however, should be noted:

Firstly, the Applicant provided no evidence of the discrimination which she is alleged to have suffered. (This had already been noted by the Tribunal in its Judgement No. 792.)

Secondly, the Classification Committee has clearly made an effort to finalize and improve the classification exercise, mainly by employing the services of a consultant who was not involved in the earlier classification exercises.

The Tribunal therefore considers that its Judgement No. 792 of 21 November 1996 has been properly implemented.

III. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Vice-President

Victor YENYI OLUNGU
Member

New York, 17 November 2000

Maritza STRUYVENBERG
Executive Secretary